
Appeal Decision

Site visit made on 12 February 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 9th March 2020

Appeal Ref: APP/Z5060/C/19/3241776
603A Heathway, Dagenham RM9 5AY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Andrius Cikanavicius against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 7 November 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of a single-family dwelling house to a House in Multiple Occupation.
 - The requirements of the notice are to:
 - Cease the use as a house of multiple occupation
 - Remove all alterations and fixtures enabling the conversion to a house of multiple occupation
 - Remove all consequent waste material from the premises.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)[b] and [f] of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Procedural Matters

2. I am also dealing with two other appeals which have been submitted by the appellant in respect of change of use to a House in Multiple Occupation (HMO) at 122 Halbutt Street and 603B Heathway, Dagenham (Appeal References: APP/Z5060/C/19/3241775 and 3241777). During the site visits the appellant queried the relationship between planning regulations and the licensing arrangements for HMO, both of which are the responsibility of the Council. I recommended to the appellant that he should await the outcome of the appeals and then seek further advice from the Council on this issue. Both he and the Council officer present were agreeable to this.
3. There is an Article 4 direction in place which removes the right to change the use of a building from a Class C3¹ (dwelling house) to a Class C4¹ (house in multiple occupation) as 'permitted development' under the Town and Country Planning (General Permitted Development) Order 1995 as amended. For this reason, planning permission is required for the change of use which the Council alleges has taken place.

¹ Town and Country Planning (Use Classes) Order 1987 as amended.

4. Since the prescribed fees have not been paid within the specified period, there is no application for planning permission deemed to have been made under section 177(5) of the Act in this case. This means that, contrary to the appellant's request it is not open to me to grant planning permission should the appeal succeed.

Ground (b)

5. An appeal under ground (b) is that the matters to which the notice relates have not occurred. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
6. The appellant says that the property is let out to a single family and is not used as a HMO. I have been provided with a copy of the tenancy agreement which indicates that at the date of the agreement there were two tenants renting the property.
7. On the other hand, the Council consider that the property has been used as an HMO and have provided a copy of a Property Licence Application (PLA) which refers to three households being accommodated in the property and three separate lettings. The PLA is dated 20 August 2019. Notwithstanding that the applicant for the PLA does not appear to have been the appellant, he is named as the freeholder of the property. The appellant says that the reason why the PLA refers to three households is because of the way the application form is set up.
8. Notwithstanding the appellant's explanation of the inconsistency between the PLA and his contention that the house is occupied by a single family, I observed that there were locks on the doors of the bedrooms. Furthermore, the kitchen accommodates multiple hobs and fridge/freezers and with the exception of cooking facilities the second floor provides all the facilities necessary for independent living.
9. These observations lead me to conclude that the house may not be being used to accommodate a single household or may not have been used for this purpose in the recent past. On this basis I cannot be sure that the house was not being used as a HMO on the date when the notice was issued which is the relevant date for the consideration of an appeal under ground (b).
10. Even though the tenancy agreement could indicate that the house has been occupied by a single household, the appellant has not demonstrated, on the balance of probabilities, that the house was not in use as a HMO on the date when the notice was issued. Therefore, the appeal under ground (b) fails.

Ground (f)

11. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
12. The appellants only argument is that the steps are excessive because the property is let to a single family and not used as a HMO. This is the same argument as was made in regard to ground (b) and I have not been persuaded by it in relation to that ground. Even if the use as a HMO has ceased, which

given the lack of evidence and my observations on site, I am not convinced has happened, the presence of lockable doors and the internal layout of the building is such that a HMO use could resume. It follows that I do not find the steps required by the notice to be excessive and the appeal under ground (f) also fails.

Conclusions

13. For the reasons given above I conclude that the appeal should not succeed, and I shall uphold the enforcement notice.

Sarah Dyer

Inspector